

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Table of Contents

Scheme of Arrangement	3
<u>What is a scheme of arrangement?</u>	3
<u>What is the purpose of the scheme of arrangement?</u>	3
<u>What are the benefits of the scheme of arrangement?</u>	3
<u>What happens if the scheme of arrangement is not approved?</u>	3
Voting	5
<u>Am I required to vote?</u>	5
<u>What happens if I vote against the scheme of arrangement?</u>	5
<u>Why are Non-In-Scope Members requested to vote?</u>	5
<u>Why are Former Members not requested to vote?</u>	5
<u>Will my vote on the scheme of arrangement impact on future premiums?</u>	5
<u>How do I know if I am an In-Scope Member or Non-In-Scope Member?</u>	6
<u>What should I do if I think I am wrongly identified as an In-Scope Member/Non-In-Scope Member?</u>	6
Meeting	7
<u>Why is the meeting organised in Glasgow?</u>	7
<u>Do I need to attend the meeting?</u>	7
<u>What happens if my appointed proxy can no longer attend the meeting or I need to change my proxy?</u>	7
Court hearing	8
<u>Why is the Court hearing in Scotland?</u>	8
<u>How do I raise my concerns with the Court in Scotland?</u>	8
Wider Medical Indemnity Market	9
<u>What are DHSC’s policy reasons for looking to introduce state backed indemnity schemes?</u>	9
<u>Will similar transactions be introduced in Wales, Scotland and Northern Ireland?</u>	9
<u>What happens if the Regulations Condition is not satisfied?</u>	9
Transaction	10
<u>How did you decide to proceed with the Transaction?</u>	10
<u>Who is Ernst & Young and why are they involved?</u>	10
<u>What are the financial and commercial terms of the Transaction?</u>	10
Ongoing Business	12
<u>Will I receive fewer benefits from DHSC once the Transaction completes compared to those currently provided to me by MDDUS?</u>	12

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Will In-Scope Members be reimbursed for the reduction in services provided by MDDUS? 12

What new potential areas of business does MDDUS intend to focus on? 12

How can I obtain more information on the CNSGP? 12

What happens to an existing claim? 12

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Please note that MDDUS cannot provide advice on the merits of the Scheme, nor give any legal, or other, advice in connection with the Scheme.

Terms in this document which are not defined have the same meaning as set out in the Scheme Circular

Scheme of Arrangement

What is a scheme of arrangement?

The scheme of arrangement which MDDUS is proposing is a binding arrangement between MDDUS and its members under Part 26 of the Companies Act 2006. The scheme is governed by Scottish Law as MDDUS's registered office is in Scotland.

The scheme of arrangement will become legally binding if it is first approved by a majority in number and at least 75% in value of the In-Scope Members and the Non-In-Scope Members, at their respective court-convened members meetings, and then subsequently sanctioned by the Court in Scotland.

In this instance, the scheme of arrangement is also conditional on the Secretary of State for Health and Social Care ("**DHSC**") making regulations (the "**Regulations**") to establish an existing liabilities scheme ("**ELS**"), the purpose of which is to provide access to discretionary indemnity to healthcare practitioners for their clinical negligence liabilities arising as a result of incidents that occurred prior to 1 April 2019 and during the provision of NHS Services as part of general practice in England (this condition being the "**Regulations Condition**").

What is the purpose of the scheme of arrangement?

While this is not the only way in which the transaction with DHSC (the "**Transaction**") could be implemented, the Board believes that a scheme of arrangement provides both clarity and transparency that the assumption of responsibility by DHSC for providing discretionary indemnity to English GP members has taken place, and therefore certainty to:

- those members that the discretionary indemnity and assistance in respect of their historic liabilities arising from clinical negligence claims relating to their NHS funded general practice work will be provided by DHSC going forward; and
- MDDUS that it is no longer responsible for providing these benefits.

What are the benefits of the scheme of arrangement?

The Board believes that a scheme of arrangement provides both clarity and transparency to:

- MDDUS's English GP members that the discretionary indemnity and assistance in respect of their historic liabilities arising from clinical negligence claims relating to their NHS funded general practice work will be provided by DHSC going forward; and
- MDDUS that it is no longer responsible for providing these benefits.

The scheme of arrangement also enables MDDUS to provide its members with information on the Transaction in a clear manner and allows members to vote on the scheme of arrangement.

What happens if the scheme of arrangement is not approved?

If the Regulations Condition is satisfied prior to the target deadline, as set out in the legal agreements signed on 20 September 2019 (the "**Transaction Documents**"), but the Scheme has either not been approved by the relevant Scheme Members at each of the Court Meetings, or, having been so approved, has not been sanctioned by the Court at the Court

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Hearing, then provided the Transaction Documents have not been terminated in accordance with their terms, the Transaction will still proceed but will be implemented in accordance with the terms of the Transaction Documents.

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Voting

Am I required to vote?

You will be requested to vote if you are a current member of MDDUS.

Whilst it is not mandatory to vote, it is important that as many votes as possible are cast so that the Court in Scotland may be satisfied that there is a fair and reasonable representation of the opinion of members.

If the requisite number of members vote to approve the scheme of arrangement and the Court in Scotland sanctions the scheme of arrangement, then you will be bound by it, even if you did not vote.

If the Regulations Condition is satisfied prior to the target deadline agreed by MDDUS and DHSC, but the Scheme has either not been approved by the relevant Scheme Members at each of the Court Meetings, or, having been so approved, has not been sanctioned by the Court at the Court Hearing, then provided the Transaction Documents have not been terminated in accordance with their terms, the Transaction will still proceed but will be implemented in accordance with the terms of the Transaction Documents.

What happens if I vote against the scheme of arrangement?

If you vote against the scheme of arrangement, there are two scenarios that may arise:

- If you vote against the scheme of arrangement but the requisite number of members vote to approve the scheme of arrangement and the Court in Scotland sanctions it, then provided that i) DHSC makes the regulations establishing the ELS and ii) the legal agreements have not been terminated in accordance with their terms, the scheme of arrangement will come into effect and you will be bound by it, even though you voted against it.
- If the scheme of arrangement is not approved by members or sanctioned by the Court in Scotland for any reason, then provided that i) DHSC makes the regulations establishing the ELS and ii) the legal agreements have not been terminated in accordance with their terms, the Transaction will still proceed, but will be implemented in accordance with terms of the Transaction Documents. In that situation, you and all other members will still be bound by the Transaction.

Why are Non-In-Scope Members requested to vote?

In order for the Court to approve the Scheme, both those members who are directly impacted by the Transaction, and those that are only indirectly impacted, must vote to approve it.

Why are Former Members not requested to vote?

Legally, only current members who appear on MDDUS's register of members as at 5:00pm on 7 February 2020 will have a right to vote on the scheme of arrangement. Therefore, Former Members cannot vote on the scheme of arrangement but will be bound by it.

Will my vote on the scheme of arrangement impact on future premiums?

Members' future premiums will not be affected by their vote on the scheme of arrangement.

Due to the reduction in services provided by MDDUS, following the introduction of The Clinical Negligence Scheme for General Practice ("CNSGP") on 1 April 2019, subscriptions have reduced for In-Scope Members.

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

How do I know if I am an In-Scope Member or Non-In-Scope Member?

For the purposes of the Scheme, Members have been separated into two classes: In-Scope Members and Non-In-Scope Members.

In-Scope Members are, in summary, those members of MDDUS who have, at any time prior to 1 April 2019 and while a member of MDDUS, worked in general practice providing services as part of the NHS for England.

Non-In-Scope Members are all members of MDDUS who have not, at any time prior to 1 April 2019 and while a member of MDDUS, worked in general practice providing services as part of the NHS for England.

If you have received a Form of Proxy entitled "Form of Proxy for In-Scope Members", MDDUS has identified you as an In-Scope Member. This form should have a red flash corner.

If you have received a Form of Proxy entitled "Form of Proxy for Non-In-Scope Members", MDDUS has identified you as a Non-In-Scope Member. This form should have a blue flash corner.

What should I do if I think I am wrongly identified as an In-Scope Member/Non-In-Scope Member?

If you have received a Form of Proxy entitled "Form of Proxy for In-Scope Members", MDDUS has identified you as an In-Scope Member. This form should have a red flash corner.

If you have received a Form of Proxy entitled "Form of Proxy for Non-In-Scope Members", MDDUS has identified you as a Non-In-Scope Member. This form should have a blue flash corner.

If you believe that the class of members in which MDDUS has identified you as is incorrect, please let us know. We will need a short explanation of the reason why you believe you have been incorrectly identified in the wrong class of members.

If we agree that you have been identified in the wrong class, we will send you a new Form of Proxy with new security codes. Once received, please complete, sign and return the new Form of Proxy using the provided pre-paid envelope to Civica Election Services or appoint a proxy online. If you are voting online, please ensure you use the security codes on the new Form of Proxy received as the security codes on your previous Form of Proxy will be invalidated.

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Meeting

Why is the meeting organised in Glasgow?

MDDUS holds its annual general meetings in Glasgow and its registered office is located there. To be consistent with this approach, MDDUS has decided to hold the Court Meetings in Glasgow.

Do I need to attend the meeting?

You are requested to vote and are invited to attend the relevant meeting, if you are a current member of MDDUS. Current members are encouraged to vote on the scheme of arrangement by completing and returning their proxy form and are welcome to attend the meeting in person, but physical attendance at the meeting is not necessary.

What happens if my appointed proxy can no longer attend the meeting or I need to change my proxy?

If your appointed proxy can no longer attend the meeting and/or you need to change the person whom you would like to appoint as your proxy, please call Civica Election Services during business hours on +44 (0) 20 8889 9203.

Alternatively, you may still attend the meeting yourself and cast a vote on the scheme of arrangement accordingly. If you do attend the relevant meeting in person and cast your vote on the scheme of arrangement, your vote will override your proxy's vote on your behalf.

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Court hearing

Why is the Court hearing in Scotland?

The scheme of arrangement is governed by Scots Law as MDDUS's registered office is in Scotland. Therefore, the Court Hearing to sanction the scheme of arrangement will be held in Scotland.

How do I raise my concerns with the Court in Scotland?

Anyone who considers that he or she may have an interest in the scheme of arrangement and who is concerned that the scheme may adversely affect him or her is entitled to be heard by the Court.

If you wish to raise concerns in relation to the scheme of arrangement with the Court, or to appear at the Court Hearing, you should seek independent legal advice and should lodge written answers to the Petition with the Court at Parliament House, Parliament Square, Edinburgh EH1 1RQ within the period of time specified in the advertisement of the Petition (which is currently expected to be published on or around 14 February 2020) and pay the required fee. Written answers are a formal Court document which enables you to raise any objections or questions you may have. They must comply with the rules of the Court and are normally prepared by Scottish counsel.

The Court will, in accordance with its practice, consider other objections to the Scheme made in person or in writing, which are not in the form of written answers and/or if you have not lodged written answers, allow you to appear at the Court Hearing. However, this practice is at the discretion of the Court, and the Court may instead require an interested party to lodge written answers in order to raise objections to the scheme of arrangement and/or appear at the Court Hearing.

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Wider Medical Indemnity Market

What are DHSC's policy reasons for looking to introduce state backed indemnity schemes?

Following consideration of the options and noting concerns raised by the medical profession and others regarding the rising cost of clinical negligence indemnity, DHSC introduced a state-backed indemnity scheme for general practice in England. The CNSGP came into effect from 1 April 2019. The CNSGP provides access to state-backed discretionary indemnity to GPs and those working in general practice in England in respect of their NHS funded work, which is performed on or after 1 April 2019. The CNSGP is similar to the existing arrangements for NHS hospital doctors and is operated by NHS Resolution.

The CNSGP is prospective, not retrospective. Therefore, DHSC also sought to put in place with the medical defence organisations arrangements substantially equivalent to the CNSGP in respect of the period before 1 April 2019. On 20 September 2019, MDDUS entered into the Transaction Documents with DHSC in this regard.

Will similar transactions be introduced in Wales, Scotland and Northern Ireland?

Wales - The Legal and Risk Services within NHS Wales Shared Service Partnership is operating the General Medical Practice Indemnity ("**GMPI**") for general practice in Wales in relation to clinical negligence claims arising from incidents that occurred on or after 1 April 2019 during the provision by healthcare professionals of NHS services as part of general practice in Wales. This is the equivalent of the English CNSGP. However, no transaction has yet been agreed between the Welsh Ministers and MDDUS with respect to existing liabilities prior to 1 April 2019. The parties are, however, in an advanced stage of negotiations and would hope to agree the terms of a transaction soon. That transaction will not, however, be implemented by a scheme of arrangement and will instead be effected through the terms of the legal contracts that MDDUS and the Welsh Ministers will enter into.

Scotland and Northern Ireland - The devolved government for Scotland and the Northern Ireland Executive are aware of the English CNSGP and Welsh GMPI. However, no similar transactions have been agreed for these jurisdictions.

What happens if the Regulations Condition is not satisfied?

The Transaction is conditional upon:

- the Transaction Documents not being terminated, in accordance with their terms, before 1 April 2021; and
- the Regulations Condition being satisfied, or waived, on, or before, 1 April 2021.

If the Transaction Documents are terminated in accordance with their terms or the Regulations Condition is not satisfied, or waived, in accordance with the terms of the Transaction Documents, by 1 April 2021, then the Transaction will not proceed, even if the Scheme is approved by the Scheme Members and sanctioned by the Court.

In these circumstances, the responsibility for providing access to discretionary indemnity and assistance in relation to clinical negligence liabilities to English GP members, and former members, will remain with MDDUS.

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Transaction

How did you decide to proceed with the Transaction?

The Board of MDDUS decided to proceed with the Transaction and scheme of arrangement following detailed consideration of the factors listed within the Chair's letter. The Board also took advice from its legal and financial advisers, Ernst & Young, on the terms and structure of the Transaction.

Having considered the factors listed in the Chair's letter, the Board concluded unanimously that the Transaction would benefit all members for the following reasons:

- the price agreed to be paid to DHSC by MDDUS to assume the historic liabilities associated with the English GPs NHS book of business was fair;
- once implemented, the Transaction will provide MDDUS with the opportunity to focus on ongoing and new areas of business;
- the Transaction will not disrupt MDDUS's ongoing services to members; and
- MDDUS members who, at any time while a member of MDDUS, worked in general practice providing services as part of the NHS for England, will have access to state-backed discretionary indemnity schemes in respect of both their historic and future liabilities arising from performing such work.

Who is Ernst & Young and why are they involved?

Ernst & Young LLP (EY) is a global consultancy firm that provided financial and legal advice to MDDUS on the Transaction and continue to support MDDUS through the scheme of arrangement.

What are the financial and commercial terms of the Transaction?

Under the terms of the Transaction Documents, DHSC has agreed, subject to the Regulations Condition being satisfied, or waived, to assume responsibility, through the establishment of the ELS, for providing access to discretionary indemnity to MDDUS members and former members for their clinical negligence liabilities arising as a result of incidents which occurred prior to 1 April 2019 (and while they were members of MDDUS) during the provision of NHS services in England as part of general practice. The main purpose of the Regulations is to establish the ELS to enable DHSC to provide the discretionary indemnity.

MDDUS made a payment to DHSC in consideration for the assumption by DHSC of the responsibility, under the ELS (once established), to provide In-Scope Members, and In-Scope Former Members, discretionary benefits in respect of In-Scope Benefits and In-Scope Claims. The amount of that payment is not disclosed for reasons of commercial confidentiality.

The documents listed below pertaining to the scheme of arrangement and the Transaction will be made available to members on MDDUS's website as and when they are issued:

- Scheme Circular;
- Action to Take Letter – In-Scope Members version;
- Action to Take Letter – Non-In-Scope Members version;
- Chair's Letter;
- Template Form of Proxy – In-Scope Members version;
- Template Form of Proxy – Non-In-Scope Members version;
- Draft of the Articles as proposed to be amended by the scheme of arrangement;

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

- Draft of the Membership Agreement as proposed to be amended by the scheme of arrangement; and
- Any announcements issued in connection with the scheme of arrangement.

Scheme Members may request a hard copy of the Scheme Circular by contacting Civica Election Services during business hours on +44 (0) 20 8889 9203 or by submitting a request in writing to Civica Election Services at The Election Centre, 33 Clarendon Road, London, N8 0NW. Unless such a person makes such a request, a hard copy of the Scheme Circular will not be sent to that person. Such persons may also request that all future documents, announcements and information to be sent to them in relation to the Scheme be in hard copy form.

MDDUS – FAQs on the proposed Scheme of Arrangement between MDDUS and its members

Ongoing Business

Will I receive fewer benefits from DHSC once the Transaction completes compared to those currently provided to me by MDDUS?

The discretionary benefits and categories of indemnity protection provided by MDDUS, set out in Appendix 1 of the Scheme Circular, do not fall within the definition of In-Scope Benefits and will not, therefore, be provided by DHSC under the ELS.

Access to such discretionary benefits in relation to incidents arising before 1 April 2019 will continue to be provided by MDDUS.

Will In-Scope Members be reimbursed for the reduction in services provided by MDDUS?

In-Scope Members whose annual membership continued beyond 31 March 2019 had their subscription reduced for the remainder of their membership period after this date to reflect the reduction to services provided by MDDUS since 1 April 2019. Direct debits were reduced to cover any outstanding amount over the remaining instalments and those who had overpaid received a full refund of the overpayment.

What new potential areas of business does MDDUS intend to focus on?

MDDUS will continue to provide the discretionary benefits and categories of indemnity not covered by DHSC under the CNSGP or the ELS (once established). MDDUS has developed a new product, General Practitioner Protection, following the introduction of the CNSGP which provides non-claims cover, such as professional advice, complaints handling service, support in disciplinary matters, coroners' inquests and a standard £10,000 of private claims cover for non-NHS work. This product can be supplemented to provide cover to other health professionals operating within the primary care team.

Additionally, MDDUS is exploring a wide range of options to develop additional services to all its members and will communicate these in due course

How can I obtain more information on the CNSGP?

Further information can be found at NHS Resolution's webpage (<https://resolution.nhs.uk/services/claims-management/clinical-schemes/clinical-negligence-scheme-for-general-practice/>) which provides further information on the CNSGP.

The ELS is equivalent to the CNSGP for incidents that occurred prior to 1 April 2019. The ELS has not yet been established and the ELS Operator has not been confirmed.

What happens to an existing claim?

Claims that will transfer to DHSC when the scheme of arrangement takes effect -

If you have an ongoing claim that MDDUS is handling and which relates to an incident that occurred during your period of membership with MDDUS, while you were working in general practice providing NHS services in England prior to 1 April 2019, DHSC will assume responsibility for administering and handling that claim once the scheme of arrangement takes effect. MDDUS will provide further information on the practicalities of this to affected members in due course.

Claims that will remain with MDDUS - Any other claims that MDDUS are currently handling on your behalf or any other assistance with MDDUS is providing will continue to be administered, handled and provided by MDDUS.